(12)

FILED
JAN 21 2005
OFFICE OF THE CLERK

No. 03-10198

In The Supreme Court of the United States

ANTONIO DWAYNE HALBERT,

Petitioner,

v.

MICHIGAN,

Respondent.

On Writ Of Certiorari To The Michigan Court Of Appeals

JOINT APPENDIX

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Petition For Writ Of Certiorari Filed November 20, 2003
Certiorari Granted January 7, 2005

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RELEVANT DOCKET ENTRIES

STATE OF MICHIGAN,
CIRCUIT COURT, COUNTY OF SAGINAW

CASE: 00-019193-FH OFFENSE: 6/27/00

DATE	ACTIONS, JUDGMENTS, CASE NOTES
7/07/2000	COMPLAINT FILED
	* * *
7/20/2000	ADJ PE, WAIVED 14 DAY SETTING, RE-SET PRELIM
	* * *
8/18/2000	PRELIM EXAM SCHEDULED FOR 9/26/2000 AT 10:15 AM
	* * *
9/26/2000	ADJOURNED PRELIM EXAM ORIG. SCHED. 9/26/2000 PRELIM EXAM SCHEDULED FOR 10/19/2000 AT 1:39 PM
	* * *
10/19/2000	PRELIM WAIVED, BOCC PRE-LIMINARY EXAM WAIVED
	* * *
11/07/2001	CT. REPORTER: K. TAGGET, CSR-3584 DFDT PLEAD GUILTY TO DEF W/ATTY R. O'FARRELL, PROS. P. MARSHALL; DEF PLED NOLO CONTENDRE [sic] TO CT 1, CSC2D DEGREE; PROS. RECOMMENDS CTS 2 & 3 BE DISMISSED AT SENTENCING; PROS. RECOMMENDS CONSECUTIVE SENTENCING W/01-20597-FH-2; COURT ACCEPTED NC PLEA; REF'D TO DOC (DEF ATTY REQUESTS CONC. SENTENCE (POLICE RPT SUBMITTED FOR COURT REVIEW)

11/07/2001 REFERRED TO DEPARTMENT OF CORRECTIONS
NOLLE CONTENDRE [sic] PLEA 01-00 2ND DEG CSC-U/13
SENTENCE SCHEDULED FOR 12/10/2001 AT 10:15 AM
DEFN INFO CHANGED BY CIRCUIT COURT PROBATION

* * *

12/10/2001 CT. REPORTER: T. STEMLER, CSR-4023
SENTENCED
DEF W/ATTY RODNEY O'FARRELL, PROS. COPPOLINO, DOC REPR; DEF SENTENCED TO 24 MOS MIN/15 YEARS MAX, CREDIT FOR 164 DAYS; PAY $60 VRF W/IN 30 DAYS; TO BE SERVED PRIOR TO AND CONSECUTIVE W/01-20597-FH-2

12/10/2001 NOLLE PROS 02-00 2ND DEG CSC-U/13
NOLLE PROS 03-00 2ND DEG CSC-U/13
MOTION/ORDER OF NOLLE PROSEQUI
NOTICE OF APPEAL RIGHTS PROVIDED TO DEFENDANT
COUNT 01-00 SENTENCED

* * *

12/17/2001 DEFENSE MOTION
MTN TO WITHDRAW PLEA; NTC HRG 12/17/01

12/18/2001 REQUEST FOR APPELLATE ATTY
FORWARDED O-A-C
OPINION AND ORDER Of THE COURT DENIES DEF'S MTN TO WITHDRAW PLEA

12/21/2001 ORDER DENYING DEF'S REQUEST FOR APPT. OF COUNSEL TO FILE APPL. LEAVE TO APPEAL

* * *

3/22/2002 TRANSCRIPT OF SENTENCE 12/10/01

* * *

7/30/2002 TRANSCRIPT OF PLEA (11-7-01) FILED BY KATHRYN TAGGET CS

* * *

9/11/2002 DEFENSE MOTION
MTN FOR APPOINTMENT OF COUNSEL; MTN FOR EVIDENTIARY HRG RESENTENCING

10/25/2002 OPINION AND ORDER OF THE COURT DENYING DEFT'S MTN FOR APPOINTMENT OF APPELLATE COUNSEL

* * *

STATE OF MICHIGAN, CIRCUIT COURT,
COUNTY OF SAGINAW

CASE: 01-020597-FH OFFENSE: 7/17/2001

DATE	ACTIONS, JUDGMENTS, CASE NOTES
7/18/2001	COMPLAINT FILED
	* * *
9/12/2001	PRE-LIMINARY EXAM WAIVED CTS 01-00; PRELIM WAIVED, BOND CONT'D, BOCC
	* * *
11/07/2001	CT. REPORTER: K. TAGGET, CSR-3584 DFDT PLEAD GUILTY TO DEF W/ATTY R. O'FARRELL, PROS. P. MARSHALL, DOC REPR; D PLED NOLO CONTENDRE [sic] TO CSC 2ND DEGREE/VICTIM SHAVONNE HARRIS; POLICE REPORT PROVIDED TO COURT FOR CONSIDERATI [sic] PROS. REQUESTS CONSECUTIVE SENTENCING W/00-10193-FH-2, DEF ATTY REQUESTS CONCURRENT; COURT ACCEPTED NC PLEA
11/07/2001	NOLLE CONTENDRE [sic] PLEA 01-00 CSC 2ND DEGREE – RELAT SENTENCE SCHEDULED FOR 12/10/2001 AT 10:15 AM DEFN INFO CHANGED BY CIRCUIT COURT PROBATION
	* * *
12/10/2001	CT. REPORTER: T. STEMLER, CSR-4023 SENTENCED DEF W/ATTY O'FARRELL, PROS. COPPOLINO, DOC REPR; DEF SENTENCED TO 57 MOS. MIN/15 YEARS MAX, TO BE SERVED FOLLOWING & CONSECUTIVE W/00-19193-FH-2, NO CREDIT FOR TIME SERVED; $60 VRF W/IN 30 DAYS
12/10/2001	NOTICE OF APPEAL RIGHTS PROVIDED TO DEFENDANT COUNT 01-00 SENTENCED
	* * *
12/17/2001	DEFENSE MOTION MTN TO WITHDRAW PLEA; NTC HRG 12/17/2001, 8:30
12/18/2001	OPINION AND ORDER OF THE COURT DENIES DEF'S MTN TO WITHDRAW PLEA
12/18/2001	REQUEST FOR APPELLATE ATTY FORWARDED O-A-C
12/21/2001	ORDER DENYING APPOINTMENT OF APPELLATE ATTORNEY
	* * *
4/15/2001	TRANSCRIPT OF SENTENCE 12/10/01, FILED BY TRACY M STEML
	* * *
7/30/2002	TRANSCRIPT OF PLEA (11-7-01) FILED BY KATHRYN TAGGET CS
9/11/2002	DEFENSE MOTION MTN FOR APPOINTMENT OF COUNSEL; MTN FOR EVIDENTIARY HRG RESENTENCING
10/25/2002	OPINION AND ORDER OF THE COURT DENYING DEFT'S MTN FOR APPOINT- MENT OF APPELLATE COUNSEL
	* * *

MICHIGAN COURT OF APPEALS

11/5/2002	**1**	**Delayed App for Leave – Criminal** Filed By Pro Per
		* * *
1/13/2003	**12**	**Order: Application – Deny – Delayed App for Leave**
		* * *

MICHIGAN SUPREME COURT

DATE	PROCEEDINGS
2003	
Feb 25	Delayed Application for Leave to Appeal filed.
	* * *
Sep 19	Ordered, Application for Leave to Appeal DENIED.
	* * *

STATE OF MICHIGAN
JUDICIAL DISTRICT
10th **JUDICIAL CIRCUIT**

INFORMATION
FELONY

CASE NO.

DISTRICT CIRCUIT 00-019193 FH-2

District Court ORI: **MI-** Circuit Court ORI: **MI-**

Defendants name and address

THE PEOPLE OF THE STATE OF MICHIGAN v ANTONIO DWAYNE HALBERT
2545 BEWICK
SAGINAW, MI 48601

Victim or complainant
LORETTA PRICE

Complaining witness
LORETTA PRICE

Co-defendant(s)

Date On or ~~about~~ before
6/27/00

City/Twp/Village County in Michigan
VARIOUS LOCATIONS IN SAGINAW COUNTY

Defendant CTN Defendant SID
73 00 004569 01

Defendant DOB Police agency report no.
12/30/67 856 2223-00

Charge Maximum penalty Defendant DLN

Witnesses

* LORETTA PRICE
* R. WEATHERSPOON
K. MCINERNEY
* SHAVONNE HARRIS
* SHARNAE PERRY
* ALEXANDRIA BEVERLY

* MARIA MCKINNEY
* FRED CAVAZOS
* JAMES BAKER
* ERICA FAIRRES
* DWAYNE FAIRRES
* EBONIE MCKINNEY
WAVONNE HALBERT
* HELEN DRAKE

STATE OF MICHIGAN, COUNTY OF Saginaw

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described, the defendant:

COUNT I – SECOND DEGREE CRIMINAL SEXUAL CONDUCT – PERSON UNDER THIRTEEN

One Antonio Dwayne Halbert, late of the County of Saginaw, State of Michigan did engage in sexual contact with another person, to-wit: Maria McKinney at the Buena Vista Community Center at 1940 S. Outer Drive on June 27, 2000, said person being under 13 years of age; Contrary to Sec. 750.520c(1)(a); M.S.A. 28.788(3)(1)(a).(750.520C1A)

HIV/STD TESTING NOTICE

Take Notice that pursuant to MCL 333.5129; NSA 14.15(5129), upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction the court must order the defendant to be tested.

FELONY: 15 years; mandatory AIDS/STD testing

COUNT II – SECOND DEGREE CRIMINAL SEXUAL CONDUCT – RELATIONSHIP

One Antonio Dwayne Halbert, late of the County of Saginaw, State of Michigan did engage in sexual contact with another person, to-wit: Shavonne Harris. at 2545 Bewick, on a date in April or May 2000, said victim being at least 13 but less than 16 years of age, to-wit: 13 years old, and the defendant being a member of the same household as the victim; Contrary to Sec. 750.520c(1)(b); M.S.A. 28.788(3)(1)(b).(750.520C1B)

HIV/STD TESTING NOTICE

Take Notice that pursuant to MCL 333.5129; MSA 14.15(5129), upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction, the court must order the defendant to be tested.

FELONY: 15 years; mandatory AIDS/STD testing

COUNT III – SECOND DEGREE CRIMINAL SEXUAL CONDUCT – PERSON UNDER THIRTEEN

One Antonio Dwayne Halbert, late of the County of Saginaw, State of Michigan did engage in sexual contact with another person, to-wit: Shar'nae Perry, at 2545 Bewick, on a date in June 2000, said person being under 13 years of age; Contrary to Sec. 750.520c(1)(a); M.S.A. 28.788(3)(1)(a). (750.520C1A)

HIV/STD TESTING NOTICE

Take Notice that pursuant to MCL 333.5129; MSA 14.15(5129), upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required, upon conviction the court must order the defendant to be tested.

FELONY: 15 years; mandatory AIDS/STD testing

*The People intend to produce at trial those witnesses designated by asterisk pursuant to 1986 PA 46.

and against the peace and dignity of the State of Michigan.

Prosecuting Attorney

11/2/00
Date

By: /s/ Barbara L. Meter
BARBARA L. METER

STATE OF MICHIGAN

IN THE 10TH CIRCUIT COURT
FOR THE COUNTY OF SAGINAW

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

v. File No.: 00-19193-FH
HON. ROBERT L. KACZMAREK

ANTONIO HALBERT,

Defendant.

_____/

MICHAEL D. THOMAS (P23539)
Attorney for Plaintiff
111 South Michigan Avenue
Saginaw, Michigan 48602
(989) 790-5330

ROD O'FARRELL (P24899)
Attorney for Defendant
1609 Court Street
Saginaw, Michigan 48602
(989) 792-9767

_____/

STIPULATION AND ORDER TO ADJOURN TRIAL SCHEDULED FOR JUNE 12, 2001

IT IS HEREBY STIPULATED AND AGREED BY Attorney for the People of the State of Michigan, MICHAEL D. THOMAS and Attorney for Defendant, ROD O'FARRELL, that the above entitled cause presently scheduled for trial be adjourned to be reset at a date convenient to all parties, due to Attorney, ROD

O'FARRELL is continuing a multi-defendant drug conspiracy trial in the United States District Court, case being *United States v. Francis Darrell Hayden*, case number 99-CR-20011-BC.

WHEREFORE the parties do stipulate that the trial of this cause presently scheduled be adjourned.

Dated: June 7, 2001 /s/ Kathleen Ann Miller
MICHAEL D. THOMAS
(P23539)
Attorney for Plaintiff

Dated: June 5, 2001 /s/ Rod O'Farrell
ROD O'FARRELL
(P24899)
Attorney for Defendant

STATE OF MICHIGAN
JUDICIAL DISTRICT
10th **JUDICIAL CIRCUIT**

INFORMATION
FELONY

CASE NO.

DISTRICT CIRCUIT 01-020597 FH-2

District Court ORI: MI- Circuit Court ORI: MI-

Defendants name and address

THE PEOPLE OF THE STATE OF MICHIGAN v ANTONIO DWAYNE HALBERT
2545 BEWICK
SAGINAW, MI 48601

Victim or complainant
RUSS UPHOLD

Complaining witness
RUSS UPHOLD

Co-defendant(s)

Date On or about
7/17/01

City/Twp./Village County in Michigan
2545 BEWICK, BUENA VISTA TOWNSHIP

Defendant CTN Defendant SID
73 01 004748 01

Defendant DOB Police agency report no.
12/30/67 856 2825-01

Charge Maximum penalty Defendant DLN

Witnesses

* RUSS UPHOLD
* SHAVONNE CHARLENE HARRIS
BETTY BLONIARCZYK

* ROYANA SILER
* ARETHA BLACKMON
CONNIE CHAPIN
DAZARENE BLEDSON
* CRAIG TUER
* NEIL SOMERS
* DAN REINHARDT

STATE OF MICHIGAN, COUNTY OF Saginaw

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The prosecuting attorney for this County appears before the court and informs the court that on the date and at the location described, the defendant:

SECOND DEGREE CRIMINAL SEXUAL CONDUCT – RELATIONSHIP

One Antonio Dwayne Halbert, late of the County of Saginaw, State of Michigan did engage in sexual contact with another person, to-wit: Shavonne Harris, said victim being at least 13 but less than 16 years of age, to-wit: Age 14 years, and the defendant being related to the victim by blood or affinity to the fourth degree; Contrary to Sec. 750.520c(1)(b); M.S.A. 28.788(3)(1)(b). (750.520C1B)

HIV/STD TESTING NOTICE

Take Notice that pursuant to MCL 333.5129; MSA 14.15(5129), upon bindover to circuit court or recorder's court, the district court judge shall order the defendant to be tested for venereal disease, hepatitis B infection, and for the presence of HIV or an antibody to HIV if the judge determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. If the district judge determines that testing is not required,

upon conviction, the court must order the defendant to be tested.

FELONY: 15 years; mandatory AIDS/STD testing

*The People intend to produce at trial those witnesses designated by asterisk pursuant to 1986 PA 46.

and against the peace and dignity of the State of Michigan.

Prosecuting Attorney

10-8-01
Date

By: /s/ Paul M. Fehrman
PAUL M. FEHRMAN

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF SAGINAW

PEOPLE OF THE
STATE OF MICHIGAN

vs. File Nos. 00-019193-FH-2
01-020597-FH-2

ANTONIO DWAYNE HALBERT,

Defendant.
_____/

PLEA

BEFORE THE HONORABLE ROBERT L. KACZMAREK,
CIRCUIT JUDGE

Saginaw, Michigan – November 7, 2001

APPEARANCES:

For the People: PAMELA A. MARSHALL (P54055)
ASSISTANT PROSECUTING ATTORNEY
111 S. Michigan Avenue Saginaw, MI
48602-2019 (989) 790-5330

For Defendant: RODNEY J. O'FARRELL (P24899)
Attorney at Law 1609 Court Street
Saginaw MI 48602-4070 (989) 792-9767

* * *

[2] MS. MARSHALL: Pamela Marshall for the People.

These matters were set for trial yesterday. We have reached a plea agreement in these cases. It's my understanding the defendant will be pleading guilty to Count I, CSC second-degree under 13 on case 00-19193 and that

should be involving the victim, Maria McKinney. I'm sorry, that's a no contest plea. He will also be pleading no contest to Count I on case 01-020597-FH-2, criminal sexual conduct second-degree, relationship, and that victim is Shayvon Harris.

In exchange for pleas of no contest on those two counts, the People agree to dismiss Count II and Count III on case 00-019193-FH-2. We also recommend the defendant be sentenced within the guidelines and we're requesting consecutive sentencing in this matter that is discretionary with the Court. And it's my understanding defendant will be requesting concurrent sentencing, but we are requesting consecutive.

And the no contest plea – I believe we provided the police reports to the Court. We would both stipulate to those as the basis for the no contest plea, and the reason for the no contest plea is the possibility of civil liability.

MR. O'FARRELL: Your Honor, Rod O'Farrell on [3] behalf Mr. Halbert. That's a correct statement. This is what I have discussed with my client, Your Honor. He does understand it and we do wish to enter a plea of no contest to the two counts as referred to contained in these two cases.

The potential for consecutive sentencing is discretionary with the Court because the second offense occurred while on bond for the first offense, Your Honor. I would state further that the civil liability in this case is active. There is neglect proceedings involving my client and specifically the mother of Shayvon in the second case and that also was affected by the first case since Shayvon was a victim in one of the cases that is being dismissed in that case.

With that being said, Your Honor, I believe my client does understand this agreement and is prepared to enter into the plea of no contest at this time, and we do stipulate to the reports as referred to by the prosecutor.

(Defendant sworn.)

THE COURT: Your name, sir?

THE DEFENDANT: Antonio Halbert, Antonia Dwayne, Halbert.

THE COURT: Are you presently on probation or parole?

[4] THE DEFENDANT: No.

THE COURT: Do you understand the maximum penalty for these offenses is 15 years?

THE DEFENDANT: Yes, sir.

THE COURT: You understand if I accept your no contest plea we'll not have a trial of any kind and you will give up certain rights that you have at a trial?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand you have a right to a trial by a jury?

THE DEFENDANT: Yes, sir.

THE COURT: By entering this plea you are giving up that right.

THE DEFENDANT: Yes, sir.

THE COURT: You also have a right to a trial by the Court without a jury with the consent of both the

prosecutor and the trial judge. You have a right to a non-jury trial.

THE DEFENDANT: Yes, sir, I understand, I do.

THE COURT: By entering these pleas you are giving up that right.

THE DEFENDANT: Yes, sir.

THE COURT: You have a right to be presumed innocent until proven guilty at the trial, do you [5] understand that?

THE DEFENDANT: Yes, sir.

THE COURT: By entering this plea you are giving up that right.

THE DEFENDANT: Yes, sir.

THE COURT: You have a right to have the burden of proving your guilt beyond a reasonable doubt placed on the prosecution throughout the trial, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: By entering this plea you are giving up that right.

THE DEFENDANT: Yes, sir.

THE COURT: You have a right to have the witnesses appear against you, do you understand that?

THE DEFENDANT: Yes, Sir.

THE COURT: By entering this plea you are giving up that right.

THE DEFENDANT: Yes, sir.

THE COURT: You have a right to question the witnesses who appear against you, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: By entering this plea you are giving up that right.

[6] THE DEFENDANT: Yes, sir.

THE COURT: You have a right to have the Court order any witnesses you wished produced for your defense to appear at the trial, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: By entering this plea you are giving up that right.

THE DEFENDANT: Yes, sir.

THE COURT: You have a right to remain silent during the trial; in other words, you don't have to testify. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: By entering this plea you are giving up that right.

THE DEFENDANT: Yes, sir.

THE COURT: You have a right not to have your silence used against you, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: By entering this plea you are giving up that right.

THE DEFENDANT: Yes, sir.

THE COURT: And you have a right to testify at the trial if you want to, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: By entering this plea you are [7] giving up that right.

THE DEFENDANT: Yes, sir.

THE COURT: You understand if I accept your plea you are giving up or waiving any claim of an appeal as of right.

THE DEFENDANT: Yes, sir.

THE COURT: You are also giving up any claim this plea was the result of any promise or consideration which was not placed on the record here in court.

THE DEFENDANT: Yes, sir.

THE COURT: And you are giving up any claim this plea is not of your own free will.

THE DEFENDANT: Yes, sir.

THE COURT: You understand if I accept your plea and you are financially unable to retain a lawyer to represent you on appeal, the Court must appoint an attorney for you if the sentence I impose exceeds the sentencing guidelines or you seek leave to appeal a conditional plea or the prosecutor seeks leave to appeal or the Court of Appeals or Supreme Court grants you leave to

appeal. Under those conditions I must appoint an attorney, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Further, if you are financially [8] unable to retain a lawyer to represent you on appeal, the Court may appoint an attorney for you if you allege an improper scoring of the sentencing guidelines, you object to the scoring at the time of the sentencing and the sentence I impose exceeds the sentencing guidelines as you allege it should be scored. Under those conditions I may appoint an attorney for you, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, as I understand what's happening today, in Case Number – the case involving Maria McKinney, you are entering a no contest plea to second-degree criminal sexual conduct.

THE DEFENDANT: Yes, sir.

THE COURT: And in the case – also a case involving Sheyvon Harris, you are entering a no contest plea to second-degree criminal sexual conduct.

THE DEFENDANT: Yes, sir.

THE COURT: In exchange for that, Counts II, III – and in regard to – the Maria McKinney Information would be dismissed.

Further, the People are recommending that you be sentenced within the guidelines, although they are requesting consecutive sentencing and your counsel is indicating he's going to make a request for concurrent [9] sentencing. Is that your understanding of the agreement?

THE DEFENDANT: Yes, sir.

THE COURT: Counsel, have I correctly stated the agreement?

MR. O'FARRELL: You have.

MS. MARSHALL: Yes, Your Honor.

THE COURT: Any other promises or considerations I should be made aware of?

MR. O'FARRELL: There are none.

MS. MARSHALL: People are aware of none.

THE COURT: Has anyone promised you anything beyond what I've stated here on the record to induce you to make this plea?

THE DEFENDANT: No, sir.

THE COURT: Has anyone threatened you in any manner to induce you to make this plea?

THE DEFENDANT: No, sir.

THE COURT: Is it your own choice to plead no contest to both these charges?

THE DEFENDANT: Yes, it is, sir.

THE COURT: The Court has reviewed the preliminary examination in the case involving Maria McKinney and – and I read the police reports involving Shayvon Harris and I find that if the information [10] contained in there were believed by the trier of fact they would prove beyond a reasonable doubt the elements of the two charges here.

Furthermore, because of the potential for civil litigation, the very nature of the case, the no contest plea is appropriate.

Do counsel believe I've complied with the court rule regarding no contest pleas?

MS. MARSHALL: People, are satisfied.

MR. O'FARRELL: Yes, Your Honor.

THE COURT: I will state for the record I have not agreed on a possible plea or possible sentence with the prosecutor, the defendant or anyone acting in the interest of either. I find the plea understandingly made, voluntary and accurate. I'll accept it. I'll refer the matter to the department of corrections for a presentence investigation.

MS. MARSHALL: Thank you.

MR. O'FARRELL: Thank you, Your Honor. (Plea concluded.)

* * *

[11] STATE OF MICHIGAN)
) SS
COUNTY OF SAGINAW)

I, Kathryn A. Tagget, Official Court Reporter, do hereby certify that I reported in shorthand the proceedings held in the above-entitled cause before the Honorable Robert L. Kaczmarek, Circuit Judge, in Saginaw, Michigan

I further certify that the attached and foregoing pages constitute a full, true and correct transcription of my shorthand notes then and there taken.

/s/ Kathryn A. Tagget
Kathryn A. Tagget, RMR, CSR-3584
Official Court Reporter
111 South Michigan Avenue
Saginaw, MI 48602

STATE OF MICHIGAN
IN THE CIRCUIT COURT OF THE
COUNTY OF SAGINAW
[Caption Omitted in Printing]

SENTENCING INFORMATION REPORT

Offender: Halbert, Antonio Dwayne **SSN:** 432-25-3270
Workload: 2310 **Docket Number:** 0019193

Judge: The Honorable Robert Kaczmarek
Bar No.: P15639 **Circuit No.** 10 **County:** 73

Conviction Information

Conviction PACC: 750.520C1A **Offense Title:** CSC, 2nd Degree (Person Under 13)

Crime Group Person **Offense Date:** 12/20/2000

Crime Class: Class C **Conviction Count:** 1 of 2 **Scored as of:** 12/20/2000

Statutory Max: 180 **Habitual:** No **Attempted:** No

Prior Record Variable Score

PRV1: 0 PRV2: 0 PRV3: 0 PRV4: 0 PRV5: 0
PRV6: 0 PRV7: 10

Total PRV: 0
PRV Level: A

Offense Variable

OV1: 0 OV2: 0 OV3: 0 OV4: 0 OV5: 0 OV6: 0
OV7: 0 OV8: 0 OV9: 10 OV10: 10 OV11: 0 OV12: 0
OV13: 25 OV14: 0 OV16: 0 OV17: 0 OV18: 0 OV19: 0

Total OV: 45

OV Level: IV

Sentencing Guideline Range

Guideline Minimum Range: 12 to 24

Minimum Sentence

	Months	Life
Probation:	24	☐
Jail:		
Prison:		☐

Sentence Date: 12-10-01
Guideline Departure: No
Consecutive Sentence: Yes
Concurrent Sentence: Yes

Sentencing Judge: /s/ R.L. Kaczmarek **Date:** 12-10-01

Prepared By: HALL, DEBRA KAY

STATE OF MICHIGAN
IN THE CIRCUIT COURT OF THE
COUNTY OF SAGINAW
[Caption Omitted in Printing]

SENTENCING INFORMATION REPORT

Offender: Halbert, Antonio Dwayne **SSN:** 432-25-3270
Workload: 2310 **Docket Number:** 0120597

Judge: The Honorable Robert Kaczmarek
Bar No.: P15639 **Circuit No.** 10 **County:** 73

Conviction Information

Conviction PACC: 750.520C1A **Offense Title:** CSC, 2nd Degree (Person Under 13)
Crime Group Person **Offense Date:** 7/17/2001
Crime Class: Class C **Conviction Count:** 2 of 2 **Scored as of:** 7/17/2001
Statutory Max: 180 **Habitual:** No **Attempted:** No

Prior Record Variable Score

PRV1: 0 PRV2: 0 PRV3: 0 PRV4: 0 PRV5: 0
PRV6: 10 PRV7: 10

Total PRV: 20

PRV Level: C

Offense Variable

OV1: 0 OV2: 0 OV3: 0 OV4: 10 OV5: 0 OV6: 0
OV7: 0 OV8: 0 OV9: 0 OV10: 10 OV11: 0 OV12: 0
OV13: 25 OV14: 0 OV16: 0 OV17: 0 OV18: 0 OV19: 0

Total OV: 45

OV Level: IV

Sentencing Guideline Range

Guideline Minimum Range: 29 to 57

Minimum Sentence

	Months	Life
Probation:		☐
Jail:		
Prison:		☐

Sentence Date: 12-10-01
Guideline Departure: No
Consecutive Sentence: Yes
Concurrent Sentence: Yes

Sentencing Judge: /s/ R.L. Kaczmarek **Date:** 12-10-01

Prepared By: HALL, DEBRA KAY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR
THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN — File Nos. 00-019193-FH, 01-020597-FH

vs.

ANTONIO D. HALBERT,

Defendant.

SENTENCE

BEFORE THE HONORABLE
ROBERT L. KACZMAREK, CIRCUIT JUDGE

Saginaw, Michigan – December 10, 2001

APPEARANCES:

For the People: BERNARD J. COPPOLINO (P33577)
ASSISTANT PROSECUTING ATTORNEY
111 S. Michigan Avenue
Saginaw, MI 48602-2019
(989) 790-5330

For Defendant: RODNEY J. O'FARRELL (P24899)
Attorney at Law
1609 Court Street
Saginaw MI 48602-4070
(989) 792-9767

[2] December 10, 2001

Saginaw, Michigan

THE COURT: Okay. Sir, you were in court back on November 7th of this year at which time you pled guilty

to two counts of second degree criminal sexual conduct. Is that correct?

THE DEFENDANT: It was no contest, yes, sir.

THE COURT: Have you had a chance to talk to the Department of Corrections about what happened here?

THE DEFENDANT: Have I had a chance to talk with them?

THE COURT: Did you talk to Miss Hall?

THE DEFENDANT: Yes, sir.

THE COURT: Did you review her report?

THE DEFENDANT: Yes, sir.

THE COURT: Is there anything inaccurate in the report?

THE DEFENDANT: No, sir.

THE COURT: Counsel have a chance to review the report?

MR. O'FARRELL: Yes, your Honor. Rod O'Farrell on behalf of Mr. Halbert. I read through it with him the end of last week. It is accurate. We have no additions or corrections.

THE COURT: Anything in addition to the [3] report?

MR. O'FARRELL: No, your Honor, not at this time.

THE COURT: Mr. Coppolino, anything?

MR. COPPOLINO: Your Honor, it's my understanding that a representative of the victim does wish to address the Court.

THE COURT: Okay.

MR. O'FARRELL: Judge, excuse me. When you said in addition to the report, did you mean – you weren't talking about allocution, were you?

THE COURT: Yeah, I was.

MR. O'FARRELL: Oh, I'm sorry. Then I would have some remarks, your Honor.

Your Honor, as the Court is aware, there's an issue in this case of consecutive versus concurrent sentencing. The Court has discretion because this second offense occurred while on bond on the first offense.

Mr. Halbert and his wife had retained me in this case. Mr. Halbert had been on tether throughout the great majority of the time period between the first and the second offense. He had been undertaking counseling with Mr. Gonzales from the Department of Mental Health, and we have received positive reports [4] through that period.

Mr. Halbert recognizes that he has a problem. He has some remarks that he will address to the Court when given the opportunity, but I would ask the Court to sentence him concurrently, your Honor, and I believe that in all the circumstances in this case, that a sentence in the midpoint of the guideline range would be appropriate.

MR. COPPOLINO: Mr. McKinney.

THE VICTIM: Your Honor, my name is Alondo McKinney, parents of Maria McKinney, the victim, and I

think he should get – me, myself, I feel he should get consecutive because you all let him out once and let him go back and do it again. Me, myself, I don't care – that's my child. It could be any child. You don't let nobody out there touching no 12, 13-year-old kid.

THE COURT: Thank you.

MR. COPPOLINO: Your Honor, for the People, we would also be recommending consecutive sentencing given the nature of these offenses.

THE COURT: Sir, anything you want to add?

THE DEFENDANT: Yes, sir. To your Honor and the people of the court, I, Antonio Halbert, would like to say to the people of the court I have been a moral [5] person all my life. I've made a mistake. I have to live with it for the rest of my life. To the families that I have done things to that was unmoral, I am sorry for what I have done. I want to be – I want it to be made known I work and got through school. I would like to still work in society to be the best person I could possibly be. When I get out, I would like to get help, and while incarcerated, I would seek counseling.

I would like the Court to know I am very sorry for what happened, and I'm sorry for this case – for this case had to be presented before you, your Honor. I am a church-going person. I believe in what's right for all people in the world.

I would like another chance to do right for myself and family. I feel I could show the Court what kind of person I really am, and I have the Lord to thank because, with his help, I can become a better person, I will accept the responsibility for what has happened and accept the

punishment by saying to the Court and the families I am sorry.

THE COURT: Okay. In regard to Case Number 0019193, the maximum penalty I'm setting at 15 years, the minimum at 24 months. Consecutive with that on Case Number 0120597, the maximum 15, the minimum at 57 months. These are within the guidelines. Credit for [6] how many – 138 days?

MR. O'FARRELL: I believe the one case has –

THE COURT: 164?

MR. O'FARRELL: Yes.

THE COURT: 164 days credit.

MR. COPPOLINO: And that's – with it being consecutive, then, your Honor, the 164 applies to the first case. Correct?

THE COURT: Correct.

MR. O'FARRELL: Thank you, Judge.

THE COURT: If you wish to appeal either your plea or sentence, I'll give you a form which explains the conditions under which I must appoint an attorney and the conditions under which I may appoint an attorney. The request for the appointment of attorney must be made in writing and sent to the court within 42 days. There's a 60-dollar Victim Rights Fund on each one of them.

THE CLERK: No forensic lab?

THE COURT: I don't believe so.

(Proceedings adjourned.)

[7] STATE OF MICHIGAN)
) SS
COUNTY OF SAGINAW)

I certify that this transcript is a complete, true and correct transcript of the proceedings and testimony taken in this case before the Honorable Robert L. Kaczmarek, Circuit Judge, in Saginaw, Michigan.

/s/ Tracy M. Stemler
Tracy M. Stemler, CSR-4023
Official Court Reporter
111 South Michigan Avenue
Saginaw, MI 48602

JUDGMENT
OF SENTENCE COMMITMENT TO
CORRECTIONS DEPARTMENT

STATE OF MICHIGAN **10TH JUDICIAL CIRCUIT** **SAGINAW COUNTY**		**CASE NO.** 00-019193-FH-2

ORI-**MI-1730015 J**	Court Address	Court Telephone no.
Police Report No.	**111 S. MICHIGAN AVE., SAGINAW, MICHIGAN**	**(517) 790-5471**

THE PEOPLE OF THE STATE OF MICHIGAN	**V**	Defendant's name, address, and telephone no. HALBERT, ANTONIO DWAYNE 2545 BEWICK SAGINAW, MI 48601

CTN	**SID**	**DOB**
73-00-004569-01		12/30/67

Prosecuting attorney name	**Bar no.**
Michael D. Thomas	**P23539**

Defendant attorney name	**Bar no.**
O'FARRELL, RODNEY J.	P24899

THE COURT FINDS:

1. The defendant, represented by counsel, was found guilty on 11/7/01 (Date) of the crimes stated below:

Plea insert "G" for guilty plea; "NC" for nolo contendere, "MI" for guilty but mentally ill • Use "X" if sentence is to be enhanced because of Habitual Offender Act.

Count	CONVICTED BY Plea*	Court*	Jury	CRIME	CHARGE (CODE(S) MCL citation/ PACC Code
1	NC			2nd Dec CSC-U/13	750.520C1A

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.732 or MCL 281.1040.
The defendant's driver license number is: _____

☐ 3. HIV testing was ordered on 12/10/2001 (Date). Confidential test results are on file.

IT IS ORDERED:

4. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years	Mos.	Days	MAXIMUM Years	Mos.
1	12/10/01		24		15	

DATE SENTENCE BEGINS	JAIL CREDIT Mos.	Days	OTHER INFORMATION
12/10/01		164	PRIOR TO & CONSECUTIVE
			W/01-20597-FH-2

☐ Defendant shall pay restitution of $ _____. If a cash bond/bail was personally posted by the defendant, payment toward restitution is to first be collected out of that bond/bail and allocated as specified under MCL 775.22.

☐ 5. Sentence(s) to be served consecutively to:
☐ each other. ☐ case numbers 01-20597-FH-2.

6. Defendant shall pay a $60.00 assessment for the Crime Victim Rights Fund.

7. Court recommendation:

☐ 8. Defendant shall pay a $150.00 assessment for forensic lab test.

12/11/01 /s/ R. L. Kaczmarek P15639
Date Judge ROBERT L. KACZMAREK Bar no.

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needles delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL) /s/ Linda D. Polzin
Deputy court clerk

JUDGMENT OF SENTENCE COMMITMENT TO CORRECTIONS DEPARTMENT

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT SAGINAW COUNTY		CASE NO. 01-020597-FH-2

ORI-MI-1730015 J	Court Address	Court Telephone no.
Police Report No.	111 S. MICHIGAN AVE., SAGINAW, MICHIGAN	(517) 790-5471

THE PEOPLE OF THE STATE OF MICHIGAN	V	Defendant's name, address, and telephone no. HALBERT, ANTONIO DWAYNE 1602 WALNUT SAGINAW, MI 48601

CTN	SID	DOB
73-01-004748-01		12/30/67

Prosecuting attorney name	Bar no.
Michael D. Thomas	P23539

Defendant attorney name	Bar no.
O'FARRELL, RODNEY J.	P24899

THE COURT FINDS:

1. The defendant, represented by counsel, was found guilty on 11/7/01 (Date) of the crimes stated below:

Plea insert "G" for guilty plea; "NC" for nolo contendere, "MI" for guilty but mentally ill • Use "X" if sentence is to be enhanced because of Habitual Offender Act.

Count	CONVICTED BY Plea*	Court*	Jury	CRIME	CHARGE (CODE(S) MCL citation/ PACC Code
1	NC			CSC 2ND DEGREE-RELAT	750.520C1B

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.732 or MCL 281.1040.
The defendant's driver license number is: _____

☐ 3. HIV testing was ordered on 12/10/2001 (Date). Confidential test results are on file.

IT IS ORDERED:

4. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years	Mos.	Days	MAXIMUM Years	Mos.
1	12/10/01		57		15	

DATE SENTENCE BEGINS	JAIL CREDIT Mos.	Days	OTHER INFORMATION
12/10/01		0	CONSECUTIVE W/00-19193FH2

☐ Defendant shall pay restitution of $ _____. If a cash bond/bail was personally posted by the defendant, payment toward restitution is to first be collected out of that bond/bail and allocated as specified under MCL 775.22.

☒ 5. Sentence(s) to be served consecutively to:
☐ each other. ☐ case numbers 00-19193-FH-2.

6. Defendant shall pay a $60.00 assessment for the Crime Victim Rights Fund.

7. Court recommendation:

☐ 8. Defendant shall pay a $150.00 assessment for forensic lab test.

12/11/01 /s/ R. L. Kaczmarek P15639
Date Judge ROBERT L. KACZMAREK Bar no.

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needles delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

/s/ Linda D. Polzin
(SEAL) Deputy court clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT OF THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v. **File No. 01-020597-FH-2**
File No. 00-019193-FH-2

ANTONIO HALBERT,

Defendant.
_____/

ORDER OF THE COUPT

At a session of said Court, held at the Court House in the City of Saginaw, County of Saginaw, and State of Michigan, this 18th day of December 2001;

PRESENT: HONORABLE ROBERT L. KACZMAREK, Circuit Judge

This matter comes before the Court on Defendant's Motion to Withdraw Plea.

The Defendant was sentenced on December 10, 2001. The Defendant's Motion to Withdraw Plea is not timely as it was made after sentencing on December 11, 2001. After reviewing the record, there was no agreement as to if the sentences were to run concurrent or consecutive. The Defendant's proper remedy is to appeal to the Michigan Court of Appeals. Accordingly, Defendant's motion is **DENIED**.

It is so ordered.

/s/ Robert L. Kaczmarek
Robert L. Kaczmarek
Circuit Judge
10th Judicial Circuit

Dated: December 18, 2001.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF SAGINAW

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

File No. **00-019193-FH-2**

v

Judge **Robert L. Kaczmarek**

ANTONIO DEWAYNE HALBERT
Defendant.
_____/

ORDER DENYING DEFENDANT'S REQUEST FOR APPOINTMENT OF COUNSEL TO FILE APPLICATION FOR LEAVE TO APPEAL

At a session of said Court, held in the Courthouse in the City and County of Saginaw, State of Michigan, on the 21 day of December, 2001.

PRESENT: HONORABLE **Robert L. Kaczmarek, Circuit Court Judge**

In this cause, defendant has filed a request for a court appointed attorney to assist him in filing an Application for Leave to Appeal to the Court of Appeals following a voluntary plea.

The Court denies appointment of an attorney at public expense for the following reasons:

☑ 1. The defendant does not have a constitutional or statutory right to appointment of appellate counsel to pursue a discretionary appeal. *People v. Bulger*, 462 Mich. 495 (2000), cert. den. 121 SCt. 486.

☑ 2. The defendant fails to set forth any meritorious issue as required by *People v. Najar*, 229 Mich. 393 (1998).

☑ 3. The defendant's plea was not conditional.

☑ 4. The defendant's sentence was in accordance with the plea bargain.

☑ 5. The defendant specifically and voluntarily waived his right to have an attorney appointed at public expense to assist him in filing an application for Leave to Appeal or to assist with other post conviction remedies.

☑ 6. The defendant's sentence was within the sentencing guidelines.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that defendant's petition for appointment of a court-appointed attorney to assist him in filing for an Application for Leave to Appeal be and the same is denied.

Robert L. Kaczmarek
Robert L. Kaczmarek,
Circuit Court Judge

I certify on this date I mailed a copy of this order denying appointment of counsel to defendant and prosecutor. I also mailed a copy of the defendant's request for appointment of counsel to the prosecutor.

DATE: 12-21-01 Vickie K. Mahan
JNN DENYCNC

NOTICE OF RIGHTS AFTER SENTENCING (AFTER PLEA OF GUILTY/NOLO CONTENDERE) AND REQUEST FOR APPOINTMENT OF ATTORNEY

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT SAGINAW COUNTY	**CASE NO.** 00-019193-FH-2 **Judge:** R.L. KACZMAREK

Court Address: **111 So. MICHIGAN AVE., SAGINAW, MI 48602**

Court Telephone no.

THE PEOPLE OF THE STATE OF MICHIGAN	**V**	Defendant/Juvenile name, address, and telephone no., and date of birth ANTONIO DEWAYNE HALBERT

NOTICE OF APPEAL RIGHTS Note to Court: This must be given to the defendant/juvenile at sentencing

1. If you wish to appeal your plea or sentence, you may file an application for leave to appeal with the Court of Appeals.

2. If you request the appointment of an attorney and are found indigent, the court **must** appoint an attorney if: a) the prosecuting attorney seeks leave to appeal; or b) your sentence exceeds the upper limit of the minimum sentence range of the application sentencing guidelines; or c) the Court of Appeals or the Supreme Court grants your application for leave to appeal; or d) you seek leave to appeal a conditional plea under MCR 6.301(C)(2)

If you request the appointment of an attorney and are found indigent, the court may appoint an attorney if: a) you seek leave to appeal a sentence based upon an alleged improper scoring of an offensive variable or a prior record variable; and b) you objected to the scoring or otherwise preserved the matter for appeal; and c) the sentence imposed by the court constitutes an upward departure from the upper limit of the minimum sentence range that you allege should have been scored.

3. A request for the appointment of an attorney must be made in writing and sent directly to the court at the address noted above within 42 days. The financial schedule on the back of this form must be completed.

RECEIPT OF NOTICE OF APPEAL RIGHTS AND APPLICATION FOR LEAVE TO APPEAL

On this day I received this form and financial schedule and an application for leave to appeal. I understand that I must return the completed Request for Appointment of Attorney to the court within 42 days if I want an attorney appointed for my appeal.

12 December 2001 — Date

/s/ Antonio D. Halbert — Signature of defendant/juvenile

REQUEST FOR APPOINTMENT OF ATTORNEY AND AFFIDAVIT OF INDIGENCY

I request appointment of an attorney to appeal my conviction. Conditions for my request are on the back of this form. The affidavit of indigency and financial schedule on the back of this form is submitted to show

my financial condition. ☐ I request the court waive the filing fee for my application for leave to appeal.

12 December 2001 — Date

/s/ Antonio D. Halbert — Signature of defendant/ juvenile

NOTE TO DEFENDANT/JUVENILE After completing the request for appointment of attorney and the affidavit of indigency and financial schedule, keep one copy for yourself and return the other copy to the court.

AFFIDAVIT OF INDIGENCY AND FINANCIAL SCHEDULE

I request a court appointed attorney and submit the following information:

1. RESIDENCE ☐ Rent ☐ Own ☐ Live with parents ☐ Room/Board ☒ Prison _____ (Number)	
2. MARITAL STATUS ☐ Single ☐ Married ☐ Divorced ☒ Separated ☐ Dependents: _____ (Number)	
3. INCOME a. **Employer name and address** None	b. **Length of employment** N/A c. **Average of pay** ☐ weekly ☐ monthly ☐ every two weeks Gross: $____ Net $____

d Other income (state monthly amount and source [DSS, VA, rent, pensions, spouse, unemployment, etc.]) If no income, state NONE.	None
4. **ASSETS** State value of car, home, bank deposits, inmate accounts, bonds, stocks, etc. If no assets, state NONE. Attach an account statement and certification for assets in prison accounts.	None
5. **OBLIGATIONS** Itemize monthly rent, installment payments, mortgage payments, child support, etc.	None
6. **REIMBURSEMENT** I understand that I may be ordered to reimburse the court for all or part of my attorney and defense costs.	

7. I pled guilty, guilty but mental ill, or nolo contendere and

   ☐ a. my sentence exceeds the upper limit of minimum sentence range of the applicable sentencing guidelines. Therefore I am entitled to a court appointed attorney if the court finds me indigent.

   ☑ b. I seek leave to appeal a conditional plea made under MCR 6.301(C)(2). Therefore, I am entitled to a court appointed attorney if the court finds me indigent.

☑ c. I believe the offense variable or a prior record variable was improperly scored and I objected to the scoring at sentencing. I state that the sentence exceeds the upper limit of the minimum sentence range of the applicable sentencing guideline. As I believe they should have been scored. Therefore, the court may appoint a court appointed attorney if the court finds me indigent.

_____
Signature

/s/ Antonio Dwayne Halbert
Name (type or print)

_____
Address

_____
City, state, zip

Subscribed and sworn to before me on _____(date)
County, Michigan. My commission expires_____
Signature _____

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF SAGINAW

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

File No. **01-020597-FH-2**

v

Judge **Robert L. Kaczmarek**

ANTONIO DEWAYNE HALBERT
Defendant.
_____/

ORDER DENYING DEFENDANT'S REQUEST FOR APPOINTMENT OF COUNSEL TO FILE APPLICATION FOR LEAVE TO APPEAL

At a session of said Court, held in the Courthouse in the City and County of Saginaw, State of Michigan, on the 21st day of December, 2001.

PRESENT: HONORABLE **Robert L. Kaczmarek, Circuit Court Judge**

In this cause, defendant has filed a request for a court appointed attorney to assist him in filing an Application for Leave to Appeal to the Court of Appeals following a voluntary plea.

The Court denies appointment of an attorney at public expense for the following reasons:

☑ 1. The defendant does not have a constitutional or statutory right to appointment of appellate counsel to pursue a discretionary appeal. *People v. Bulger*, 462 Mich. 495 (2000), cert. den. 121 SCt. 486.

☑ 2. The defendant fails to set forth any meritorious issue as required by *People v. Najar*, 223 Mich. 393 (1998).

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☑ 4. The defendant's sentence was in accordance with the plea bargain.

☑ 5. The defendant specifically and voluntarily waived his right to have an attorney appointed at public expense to assist him in filing an application for Leave to Appeal or to assist with other post conviction remedies.

☑ 6. The defendant's sentence was within the sentencing guidelines.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that defendant's petition for appointment of a court-appointed attorney to assist him in filing an Application for Leave to Appeal be and the same is denied.

Robert L. Kaczmarek
Robert L. Kaczmarek,
Circuit Court Judge

I certify on this date I mailed a copy of this order denying appointment of counsel to defendant and prosecutor. I also mailed a copy of the defendant's request for appointment of counsel to the prosecutor.

DATE: 12-21-01 Vickie K. Mahan
JNN DENYCNC

NOTICE OF RIGHTS AFTER SENTENCING (AFTER PLEA OF GUILTY/NOLO CONTENDERE) AND REQUEST FOR APPOINTMENT OF ATTORNEY

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT SAGINAW COUNTY	**CASE NO.** 01-20597-FH-2 **Judge:** R.L. KACZMAREK

Court Address: **111 So. MICHIGAN AVE., SAGINAW, MI 48602** Court Telephone no.

THE PEOPLE OF THE STATE OF MICHIGAN	**V**	Defendant/Juvenile name, address, and telephone no., date of birth ANTONIO DEWAYNE HALBERT

NOTICE OF APPEAL RIGHTS Note to Court: This must be given to the defendant/juvenile at sentencing

1. If you wish to appeal your plea or sentence, you may file an application for leave to appeal with the Court of Appeals

2. If you request the appointment of an attorney and are found indigent, the court **must** appoint an attorney if: a) the prosecuting attorney seeks leave to appeal; or (b) your sentence exceeds the upper limit of the minimum sentence range of the application sentencing guidelines; or c) the Court of Appeals or the Supreme Court grants your application for leave to appeal; or d) you seek leave to appeal a conditional plea under MCR 6.301(C)(2)

If you request the appointment of an attorney and are found indigent, the court may appoint an attorney if: a) you seek leave to appeal a sentence based upon an alleged improper scoring of an offensive variable or a prior record variable; and b) you objected to the scoring or otherwise preserved the matter for appeal; and c) the sentence imposed by the court constitutes an upward departure from the upper limit of the minimum sentence range that you allege should have been scored.

3. A request for the appointment of an attorney must be made in writing and sent directly to the court at the address noted above within 42 days. The financial schedule on the back of this form must be completed.

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On this day I received this form and financial schedule and an application for leave to appeal. I understand that I must return the completed Request for Appointment of Attorney to the court within 42 days if I want an attorney appointed for my appeal.

12 December 2001 /s/ Antonio D. Halbert
Date Signature of defendant/ juvenile

REQUEST FOR APPOINTMENT OF ATTORNEY AND AFFIDAVIT OF INDIGENCY

I request appointment of an attorney to appeal my conviction. Conditions for my request are on the back of this form. The affidavit of indigency and financial schedule on the back of this form is submitted to show

my financial condition. ☑ I request the court waive the filing fee for my application for leave to appeal.

12 December 2001 /s/ Antonio D. Halbert
Date Signature of defendant/ juvenile

NOTE TO DEFENDANT/JUVENILE After completing the request for appointment of attorney and the affidavit of indigency and financial schedule, keep one copy for yourself and return the other copy to the court.

AFFIDAVIT OF INDIGENCY AND FINANCIAL SCHEDULE

I request a court appointed attorney and submit the following information:

1. RESIDENCE
☐ Rent ☐ Own ☐ Live with parents
☐ Room/Board ☒ Prison _____ (Number)

2. MARITAL STATUS
☐ Single ☐ Married ☐ Divorced ☒ Separated
☐ Dependents: _____ (Number)

3. INCOME

a. **Employer name and address**

None

b. **Length of employment**

N/A

c. **Average of pay**

☐ weekly ☐ monthly
☐ every two weeks

Gross: $____ Net $____

d		Other income (state monthly amount and source [DSS, VA, rent, pensions, spouse, unemployment, etc.]) If no income, state NONE. None
4.	**ASSETS**	State value of car, home, bank deposits, inmate accounts, bonds, stocks, etc. If no assets, state NONE. Attach an account statement and certification for assets in prison accounts. None
5.	**OBLIGATIONS**	Itemize monthly rent, installment payments, mortgage payments, child support, etc. None
6.	**REIMBURSEMENT**	I understand that I may be ordered to reimburse the court for all or part of my attorney and defense costs.

7. I pled guilty, guilty but mental ill, or nolo contendere and

☐ a. my sentence exceeds the upper limit of minimum sentence range of the applicable sentencing guidelines. Therefore I am entitled to a court appointed attorney if the court finds me indigent.

☐ b. I seek leave to appeal a conditional plea made under MCR 6.301(C)(2). Therefore, I am entitled to a court appointed attorney if the court finds me indigent.

☑ c. I believe the offense variable or a prior record variable was improperly scored and I

objected to the scoring at sentencing. I state that the sentence exceeds the upper limit of the minimum sentence range of the applicable sentencing guideline. As I believe they should have been scored. Therefore, the court may appoint a court appointed attorney if the court finds me indigent.

/s/ Antonio D. Halbert
Signature

Antonio Dwayne Halbert
Name (type or print)

Jackson Prison
Address

Jackson, Mich.
City, state, zip

Subscribed and sworn to before me on _____(date)
County, Michigan. My commission expires_____
Signature _____

Honorable Robert L. Kaczmarek
Saginaw County Circuit Court Judge
111 S. Michigan Ave.
Saginaw, MI 48602

September 6, 2002

RE: *People* v *Antonio D. Halbert*
Case No's: 00-19193-FH & 01-20597-FH-2

Dear Judge Kaczmarek:

I am the above named defendant. I previously attempted to have a lawyer appointed for post-conviction and the request was denied.

Please find herein enclosed a Defendant's Motion for Appointment of Counsel with an included Motion for Evidentiary Hearing/Resentencing.

I present to the court that I may be entitled to appointment of counsel to assist me due to my meeting the criteria of seeking an appeal for misscored guidelines and the sentence imposed by the court would be in excess of properly scored guidelines.

Although I have not had this issue preserved at sentencing, I am seeking to have the issue addressed by the court prior to seeking relief in the Court of Appeals if relief is denied in the trial court.

Please review the enclosed motion and advise me of the Court's decision on my requests as soon as possible so that I may have at least some time of the 12 month period for filing an Application for Leave to Appeal directly to the Michigan Court of Appeals.

In considering my request, please take into account the findings of the US District Court wherein it was stated

that the Public Act Codifying the practice of denying appointed counsel to indigents seeking leave to appeal their plea based felony convictions is unconstitutional and Declaratory relief was ordered, *Tesmer* v *Granhoim,* 114 F.Supp2d 603 (2000).

It would be greatly appreciated if Your Honor would at this time appoint counsel to assist me in my efforts to have my sentencing guidelines corrected and resentenced or to seek leave to appeal.

Respectfully submitted,

/s/ Antonio D Halbert #382400
Antonio D. Halbert, #382400
Defendant in pro per
Muskegon Correctional Facility
2400 S. Sheridan Rd.
Muskegon, MI 49442-6298

cc: Michael D. Thomas
file

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR
THE COUNTY OF SAGINAW

PEOPLE OF THE STATE
OF MICHIGAN

Plaintiff,

v.

File Nos. 00-019193-FH-2
01-020597-FH-2

ANTONIO HALBERT,

Defendant. /

DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL AND REMAND FOR EVIDENTIARY HEARING/RESENTENCING

NOW COMES Defendant, ANTONIO HALBERT, in pro per, and pursuant to MCR 6.429(C) petitions this Court to APPOINT COUNSEL to assist Defendant preserve issues concerning the Presentence Report and Scoring of the Sentencing Guidelines by filing a Motion for an Evidentiary Hearing on Ineffective Assistance of Counsel and/or Motion for Resentencing, and in support hereof states as follows:

1. On November 7, 2001, Defendant pled NO CONTEST on two counts of CSC II arising from two separate transactions as part of a plea agreement which required the prosecutor to dismiss a second and third count of CSC in one of the cases.

2. On December 10, 2001, Defendant appeared in this Court for sentencing at which time consecutive sentences of 24 months to 15 years and 57 months to 15 years (81 months to 30 years) were imposed.

3. On or about December 11, 2001, Defendant filed a handwritten motion to withdraw pleas. Said motion had been prepared by another prisoner without benefit of the trial record and was inaccurate in content and form.

4. On December 21, 2001, this Court issued an Order DENYING appointment of counsel at public expense.

5. On March 18, 2002, this Court issued an order to the clerk to prepare copies of the records and files in the cases and provide them to the Defendant.

6. Defendant, who, according to the record, required special education due to learning disabilities, eventually obtained assistance from a different prisoner who reviewed the documents provided by the clerk in response to the Court's March 18, 2002 Order.

7. It appears that review of the record establishes that Defendant's trial counsel, ROD O'FARRELL (P23539), although retained, was so preoccupied with other matters, e.g. *United States v. Francis Darrell Hayden,* Case No. 99-CR-20011-BC; *People v. Timothy Burch,* Case No. 01-19568-FC, that the time and attention extended to this Defendant's case was so nominal as to be easily seen as ineffective. Attached as Defendant's Exhibits 1, 2, 3, and 4 are copies of four Motions to Adjourn trial counsel filed due to his dedication to other cases he was more interested in litigating.

8. Also attached as Defendant's Exhibits 5 and 6 are copies of the two separate SENTENCING INFORMATION REPORTS with written analysis of errors in the scoring which trial counsel failed to detect and challenge although proper evaluation prior to sentencing would have exposed the errors and resulted in significantly lesser sentences.

9. The Sentencing Information Reports now at issue appear to have been prepared by DEBRA KAY HALL, who, while possibly experienced as a bureaucratic paper pusher, IS NOT AN ATTORNEY and was motivated by subjective personal passions to color Defendant in the most absolutely worst light possible and misapplied various criteria in the scoring of the sentencing guidelines in manners which render the sentences unlawful.

10. Trial counsel's preoccupation with other matters made him inattentive to his responsibilities to Defendant and left Defendant, a mentally impaired person, essentially without representation during plea negotiations and sentencing.

11. In order to obtain re ef or alternatively to preserve these issues for appeal, Defendant is required to present the issues to this court for consideration, MCR 6.429(C).

13. Due to only having recently obtained the records and careful review, Defendant has not been able to present these challenges at an earlier time.

14. The time for filing an Application for Leave to Appeal has not expired and this Court has the authority to exercise jurisdiction and APPOINT COUNSEL to assist Defendant to develop and present the issues to the trial court and if necessary to file an Application for Leave to Appeal.

RELIEF

WHEREFORE, Defendant humbly prays this Honorable Court will GRANT his request and APPOINT COUNSEL to assist him seek post-conviction relief of

INEFFECTIVE ASSISTANCE of TRIAL COUNSEL and resulting Sentencing errors, or alternatively, REMAND this case for Resentencing under properly scored guidelines with all original parties participating.

Respectfully submitted,

/s/ Antonio D. Halbert, #382400
Antonio D. Halbert, #382400
Defendant in pro per
Muskegon Correctional Facility
2400 S. Sheridan Rd.
Muskegon, MI 49442-6298

Dated: Sept. ,2002.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF SAGINAW

PEOPLE OF THE STATE
OF MICHIGAN

Plaintiff

vs.

ANTONIO D. HALBERT,

Defendant. /

File Nos. 00-019193-FH-2
01-020597-FH-2

ORDER OF THE COURT

At a session of said Court, held in the Courthouse in the City and County of Saginaw, State of Michigan, on the 25th day of October, 2002.

PRESENT: HONORABLE ROBERT L. KACZMAREK, CIRCUIT JUDGE.

This matter comes before the Court for the Appointment of Counsel. In the instant case, an Order was issued by the Court denying the Defendant's Motion for Appellate Counsel. Having reviewed the case and current case law, the defendant does not have a constitutional or statutory right to appointment of appellate counsel to pursue a discretionary appeal. *People v. Bulger,* 462 Mich 495 (2000), *cert den* 121 S.Ct. 486.

THEREFORE, IT IS HEREBY ORDERED that defendant's Motion for Appointment of Counsel is **DENIED**.

It is so ordered.

/s/ RL Kazmarek
ROBERT L. KACZMAREK
Circuit Judge
10th Judicial Circuit

Date: October 25 2002.

APPLICATION FOR LEAVE TO APPEAL AFTER SENTENCING ON PLEA OF GUILTY OR NOLO CONTENDERE

STATE OF MICHIGAN COURT OF APPEALS		10th CIRCUIT COURT **SAGINAW** COUNTY **CASE NO.** 00-19193/ 01-20597-FH
THE PEOPLE OF THE STATE OF MICHIGAN	**V**	Defendant's name, address, and inmate no **Antonio Dwayne Halbert, #382400 Muskegon Correctional Facility 2400 S. Sheridan Rd Muskegon, MI 49442-6298**

Using the information from your judgment of sentence form, enter the number of the circuit court, the county, and the case number in the upper right-hand corner. Follow the instructions for each of the items. Print or type all information.

STATEMENT OF DELAY

1. This application is being filed more than 21 days after entry of the judgment of sentence because:

   ☒ I did not know until recently that I could appeal the decision.

   ☐ I could not afford the postage and copying costs to file this application.

   ☒ I did not know until recently how to appeal the decision.

   ☒ I needed to get help to complete this application.

   ☒ Other: I was awaiting a decision on a motion filed in the trial court. (Explain)

APPLICATION

2. I was found guilty on 11-7-01 (Date) of the crime(s) as stated below:

Count	PLEA G	PLEA NC	CRIME	CHARGE CODE(S) MCL citation/ PACC Code
1		XX	2nd Degree CSC-U/13	750.520C1A
1		XX	CSC 2nd Degree-Relat	750.520C1B

*Plea: Check "G" for guilty plea; check "NC" for nolo contendere

3. I was sentenced as stated below by Judge ROBERT L. KACZMAREK (Name of Judge)

Count	SENTENCE DATE	MINIMUM Years	MINIMUM Mos.	MINIMUM Days	MAXIMUM Years	MAXIMUM Mos.
1	12-10-01		24		15	
1	12-10-01		57		15	

DATE SENTENCE BEGINS	JAIL CREDIT Mos.	JAIL CREDIT Days	OTHER INFORMATION
12-10-01		164	PRIOR TO 01-20597-FH-2
12-10-01		0	CONSECUTIVE TO 00-19193-FH-2

4. ☒ I filed with the trial court a request for appointment of an attorney and affidavit of indigency on 12-18-01/9-6-02 (Date)

5. STATEMENT OF QUESTIONS INVOLVED

State the issues that you want the Court of Appeals to review, such as how you believe the circuit court erred in accepting your plea or imposing the sentence. If you need more space, attach additional pages.

Defendant-Appellant is requesting the Court of Appeals to review the trial court record for a claim of ineffective assistance of counsel which resulted in Defendant-Appellant receiving sentences which were calculated on erroneously scored sentencing guidelines and much harsher sentences than what should have been considered and/or imposed under the facts and circumstances in this case.

Defendant-Appellant would also ask this court to consider if the sentencing court has a duty to ensure that trial counsel and the prosecutor evaluate the scoring of the sentencing guidelines in order to ensure that where the guidelines have been prepared by a person without legal training, the guidelines have been properly scored.

Finally, trial counsel failed to ensure that Defendant-Appellant understood things properly

6. STATEMENT OF FACTS

Give any facts not stated in items 2, 3, and 4 on page 1 that are relevant to this appeal. You must also state the transcript pages or other parts of the record that support your facts. If you need more space, attach additional pages.

Although Defendant-Appellant was represented by retained counsel, the record will show that counsel was so involved in other cases for other clients that the representation afforded this Defendant-Appellant was perfunctory and superficial. Due to trial counsel's preoccupation with other clients' cases, trial counsel failed to evaluate the sentencing guidelines and allowed improper and unlawful procedures to be employed in dealing with the cases and sentences imposed on Defendant-Appellant. Attached Appendix "G" is a copy of Defendant-Appellant's "Motion for Appointment of Counsel and Remand for Evidentiary Hearing/Resentencing" which has been sent to the trial court but for which no acknowledgment has been provided. This pleading, more fully explains these issues. This application is being submitted to avoid expiration of time limits.

7. ARGUMENTS

For each issue listed in item 5. on page 2, state the law that supports your position and explain how the law applies to the facts of your case. If you need more space, attach additional pages.

Cuyler v. *Sullivan*, 446 US 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980); *Perillo* v. *Johnson*, 79 F.3d 441 (5th Cir 1996); *US* v. *Ellison*, 798 F.2d 1102 (7th Cir 1986); *Blanco* v. *Singletary*, 943 F.2d 1477 (11th Cir 1991), The foregoing cases relate to trial counsel being ineffective because of having other interests which prevented effective advocacy for Defendant-Appellant. *Lopez* v. *Scully*, 58 F.3d 38 (2nd Cir 1995); *Smith* v. *Stewart* 140 F.3d 1263 (9th Cir 1998); *Riascos-Prado* v. *US*, 66 F.3d 30 (2nd Cir 1995), These cases relate to trial counsel's failure to ensure

that Defendant-Appellant was treated fairly and lawfully in relation to sentencing. *Townsend* v. *Burke*, 334 US 736, 68 S.Ct. 1252 92 L. Ed 1690 (1948); *US* v. *Lewis*, 68 F.3d 987 (6th Cir 1995); *US* v. *Tabares*, 86 F.3d 326 (3rd Cir 1996); *US* v. *Takai*, 941 F.2d 738 (9th Cir 1991); *Correll* v. *Stewart*, 137 F.3d 1404 (9th Cir. 1998), these cases involve the scoring of the sentencing guidelines, inaccurate information used in determining the sentence to be imposed, and the defendant's mental condition.

In addition to the federal caselaws cited above, Defendant-Appellant would request the Court to consider the following relevant state court caselaw:

People v. *Najar*, 229 Mich App 393 (1998); *People* v. *Love*, 144 Mich App 374 (1985); *People* v. *Jackson*, 95 Mich App 565 (1980); *People* v. *Hernandez*, 443 Mich 1, (1993); *People* v. *Dowdy*, 148 Mich 517 (1986); And the following federal and state constitutional rights, U.S. Const. Amends IVX [sic], V, and VI: Mich Const. 1963, Art I, Secs. 17, 20.

As Defendant-Appellant requests appellate review of the performance of his trial counsel for ineffectiveness resulting in serious abuses and procedural errors that deprived him of proper sentencing on each conviction in a fair and lawful manner, and the mental state of Defendant-Appellant was established as having been deficient, the trial court record requires development for preservation.

The trial court has previously denied appointment of counsel for appeal and where the case now requires inquiry into the scoring of the sentencing guidelines and the performance of

trial counsel in regards to ensuring Defendant was treated fairly during the sentencing phases of his separate convictions.

Defendant-Appellant also requests this Court to consider that this application for leave to appeal involves consecutive sentences which were computed in tandem and as one at the same time. Thus the sentences should be reviewed for proportionality as set forth in *People* v. *Kent*, 194 Mich App 206 (1992); *People* v. *Warner*, 190 Mich App 734 (1991).

8. RELIEF REQUESTED

State what you want the Court of Appeals to do.

I pray the Court REMAND this case to the trial court for consideration of the issues presented in his Motion for Appointment of Counsel and Remand for Evidentiary Hearing/Resentencing, or alternatively, that the Court REMAND the Case for resentencing under proper procedures as the facts of this case requires.

_____ /s/ Antonio D. Halbert
Date Signature

PROOF OF SERVICE

I certify on this date a copy of this application and appropriate attachments were served on the prosecutor of _____ County by ☐ personal service. ☐ mail.

_____ _____
Date Signature

Court of Appeals, State of Michigan

ORDER

PEOPLE v ANTONIO DWAYNE HALBERT		HILDA R. GAGE Presiding Judge
Docket No.	244756	E. THOMAS FITZGERALD
LC No.	00-19193-FH-2; 01-020597-FH-2	HENRY WILLIAM SAAD Judges

The Court orders that the defendant-appellant's delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/s/ Hilda R. Gage
HILDA R. GAGE
Presiding Judge

[SEAL] A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 13 2003 /s/ Sandra Schultz Mengel
Date Chief Clerk

COVER LETTER

February 21, 2003
(Put Today's Date)

Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: People v. Antonio Halbert	(The name you were convicted under goes here.)
Supreme Court No. _____	(Leave blank – the Clerk will assign a number for you.)
Court of Appeals No. 244756	(Get this number from the Court of Appeals decision.)
Trial Court No. 01-20597/00-19193-FH	(Get this number from Court of Appeals brief or Presentence Investigation Report.)

Dear Clerk:

Enclosed please find the original of the pleadings checked below. (Put a check mark by the items you are sending.) I am indigent and can not provide seven copies. Please file them.

_X_ Affidavit of Indigency/Proof of Service

_X_ (Delayed) Pro Per Application for Leave to Appeal

_X_ Court of Appeals Decision (You must enclose a copy of the Court of Appeals decision.)

_X_ Court of Appeals Brief (This is not necessary, but it is a good idea.)

___ Supplemental Court of Appeals Brief (This is not necessary, but it is a good idea.)

X Other TRIAL COURT MOTION FOR APPOINTMENT OF COUNSEL AND REMAND FOR EVIDENTIARY HEARING/RESENTENCING/ORDER DENYING SAME

Thank you.

Sincerely,

/s/ Antonio D. Halbert
(Sign here)

Antonio D. Halbert
(Print Name)

382400
(Prisoner Number)

2400 S. Sheridan Rd
(Address)

Muskegon, MI 49442-6298
(City, State, Zip Code)

Copy sent to:
Saginaw County Prosecutor

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,	Supreme Court No. _____ (Leave blank.)
Plaintiff-Appellee,	Court of Appeals No. 244756 (Get this from the court of Appeals decision or brief.)
v	
Antonio D. Halbert (Print the name you were convicted under on this line.)	Trial Court. No. 01-20597/00-19193-FH (Get this number from Court of Appeals brief or Presentence investigation Report.)
Defendant-Appellant.	

(DELAYED) PRO PER APPLICATION FOR LEAVE TO APPEAL

INSTRUCTIONS: Answer each question. Add more pages if you need more space. You MUST send a copy of the Court of Appeals decision. Your application must be RECEIVED by the Supreme Court no more than 56 days from the date stamped on the Court of Appeals decision.

1. I was found guilty on (date of plea or verdict) November 7, 2001.

2. I was convicted of (name of offense(s)) 2nd Degree CSC – U/13 and CSC 2nd Degree – RELAT

3. I had a XX guilty plea; ___ no contest plea; ___ jury trial; ___ trial by judge. (Mark one)

4. I was sentenced by Judge Robert L. Kaczmarek (name of judge) on December 10, 2001 (date you were

sentenced) in the Saginaw (name of county where you were sentenced; for crimes in Detroit, put Recorder's Court) County Circuit Court to 2 years ___ months (minimum sentence) to 15 years ___ months (maximum sentence), and 4 years 9 months (minimum sentence) to 15 years ___ months (maximum sentence). I am in prison at the Muskegon Correctional Facility (name of prison) in Muskegon (city), Michigan.

5. The Court Appeals affirmed my conviction on January 13, 2003 (date stamped on Court of Appeals decision), in case number 244756 (number on Court of Appeals decision). A copy of that decision is attached.

6. ____ This application is filed on time. (Check here if the Court will receive it within **21 days** from the Court of Appeals decision.)

XX This application is filed late. (Check here if the Court will receive it more than 21 days but within **56 days** from the Court of Appeals decision.) It is late because: (Check all the reasons that apply. You can add others.)

XX I had to find help

I could not get postage and supplies to file this application.

XX I am not experienced or educated in the law.

____ I did not receive my decision from my attorney in time.

XX Other. Explain It took time to obtain legal books.

GROUNDS – ISSUES RAISED IN COURT OF APPEALS

7. I want the Court to consider the issues as raised in my Court of Appeals brief and the additional information below.

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 which starts on page 7.

ISSUE I:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

Defendant-Appellant was denied effective assistance of counsel at sentencing resulting in a sentence which was based upon improperly scored sentencing guidelines and a combined consecutive sentence which exceeded appropriate scores.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

X 1. The issue raises a serious question about the legality of a law passed by the legislature.

X 2. The issue raises a legal principle which is very important to Michigan law.

X 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.

X 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

The new Michigan Sentencing Guidelines have the force of law and DUE TO MY TRIAL ATTORNEY BEING PREOCCUPIED WITH OTHER CASES THAT WERE MORE IMPORTANT TO HIM AS REFLECTED IN HIS MOTIONS AND LETTERS (included as exhibits to attachments), he failed to conduct adequate review and investigation into the scoring of the guidelines and allowed the scoring of two separate convictions on two separate cases to be scored in a manner that was unlawful and unconstitutional. If my guidelines had been properly scored as required by law, I would have less than half the prison time I was ordered to serve. Please see ***People*** **v.** ***Harmon*****, 248 MA 522 (2001);** ***Strickland*** **v.** ***Washington*****, 466 US 668 (1984);** ***Glover*** **v** ***US*****, 531 US 198 (2001), MCL 769.34(2), (10).**

ISSUE II:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

The trial court should ensure that the sentencing guidelines are evaluated for correctness so that the appropriate minimum sentencing range is applied.

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

___ 1. The issue raises a serious question about the legality of a law passed by the legislature.

X 2. The issue raises a legal principle which is very important to Michigan law.

X 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.

___ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

The Michigan Legislature and Courts have enacted and implemented laws to determine the appropriate sentence for certain offenses are tailored to not only the offense but to the offender as well. However, in my case, the sentencing guidelines were prepared by a person who abandoned the role of a fair and impartial clerk and did further simply calculate the guidelines in a clearly erroneous manner. Specifically, the first conviction was scored as though the second conviction PRECEEDED it and the same was done in reverse for the second

conviction. Since the court failed to ensure that the guidelines were appropriately scored, I am entitled to appellate review, ***Harmon***, supra. **MCL 769.34(10); *Glover***, supra.

NEW ISSUE I:

A. (State the new issue you want the court to consider.)

Under the circumstances of my case and the issues being raised, I am entitled to appointment of counsel to assist me in seeking appellate review of the sentences since I am seeking to challenge the scoring of the sentencing guidelines and question the effectiveness of trial counsel.

B. The Court should review this issue because: (Check all the ones you think apply to your case, but you must check at least one.)

___ 1. The issue raises a serious question about the legality of a law passed by the legislature.

_X_ 2. The issue raises a legal principle which is very important to Michigan law.

_X_ 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.

___ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think tht your choices in B above apply to this issue in your case. List any cases and citations, laws, or court rules, etc. which support your argument. Explain how they apply to this issue. State the facts which support and explain this issue. If these facts

were not presented in court, explain why. You can add more pages.)

Although I entered a guilty plea and there was no sentencing agreement(s), I am still entitled to appeal the scoring of the sentencing guidelines. Especially where as here, I did not have effective assistance of counsel in relation to sentencing. My trial counsel did nothing more than go through the motions in a perfunctory manner. The trial court refused to appoint counsel to assist me appeal the scoring of the sentencing guidelines, this is erroneous under ***People* v *Najar*, 229 MA 393 (1998); *People* v *Bulger*, 462 Mich 495, 505 (2000); *Tesmer* v *Granholm*, 295 F.3d 536 (6th Cir 2002); MCL 769.34(10).**

RELIEF REQUESTED

9. For the above reasons I request that this Court *GRANT* leave to appeal, *APPOINT* a lawyer to represent me, and *GRANT* any other relief it decides I am entitled to receive.

February 21, 2003	/s/ Antonio D. Halbert
(Date)	(Sign Name)
Antonio D. Halbert	382400
(Print Name)	(Prison Number)
2400 S. Sheridan Rd	Muskegon, MI 49442-6298
(Address)	(City, State, Zip Code)

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,	Supreme Court No. _____ (Leave blank.)
Plaintiff-Appellee,	Court of Appeals No. 244756 (Get this from the court of Appeals decision or brief.)
v	
Antonio D. Halbert (Print the name you were convicted under on this line.)	Trial Court. No. 01-20597/00-19193-FH (Get this number from Court of Appeals brief or Presentence investigation Report.)
Defendant-Appellant.	

AFFIDAVIT OF INDIGENCY

1. My name is Antonio D. Halbert
2. I am in prison at Muskegon Correctional Fac. (Name of prison) in Muskegon (City), Michigan.
3. My prison number is 382400;
4. Income and Assets: (Check the ones which apply to you.)

X My only source of income is from my prison job.

___ I have no income.

X I have no assets (stocks, bonds, property) which can be quickly changed into cash.

X I can not pay the filing fee for the attached application.

I ask this Court to waive the filing fee in this matter.

I declare that the statements above are true to the best of my knowledge, information and belief.

Date: February 21, 2003 /s/ Antonio D. Halbert
(Sign here)

Antonio D. Halbert
(Print name)

PROOF OF SERVICE

On February 21, 2003, I mailed by U.S. mail one copy of the documents checked below: (Put a check mark by the ones you mailed.)

X Affidavit of Indigency and Proof of Service.

X (Delayed) Pro Per Application for Leave to appeal with a copy of Court of Appeals Decision.

X Court of Appeals Brief

___ Supplemental Court of Appeals Brief

- TO: Saginaw (Fill in the county where you were convicted.) County Prosecutor, at 111 South Michigan Ave (Address), Saginaw (City), MI 48602 (Zip Code)

I declare that the statements above are true to the best of my knowledge, information and belief.

Date: February 21, 2003 /s/ Antonio D. Halbert
(Sign here)

Antonio D. Halbert
(Print name)

Order Michigan Supreme Court
Lansing, Michigan

Entered: September 19, 2003 Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

123342

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

ANTONIO DWAYNE HALBERT,
Defendant-Appellant.

SC: 123342
COA: 244756
Saginaw CC:
00-19193-FH-2;
01-020597-FH-2

/

On order of the Court, the application for leave to appeal the January 13, 2003 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Cavanagh, J., states as follows:

I would remand to the Court of Appeals for reconsideration of the defendant's application for leave to appeal. I would further direct the Court of Appeals, before reconsidering the application, to remand the case to the Saginaw Circuit Court for appointment of counsel. Counsel then could, within a reasonable time limit set by the Court of Appeals, file a supplement which the Court of Appeals

would consider as though it were a part of the defendant's initial application.

Kelly, J., joins in the statement of Cavanagh, J.

s0916

[SEAL] I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 19, 2003 /s/ Corbin R. Davis